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Supreme Court, U.S.
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In The

Supreme Court of the United States

IN RE: ANDRÉ QUINN BELL,

On Petition For Writ Of Mandamus
To The Supreme Court Of Iowa

PETITION FOR WRIT OF MANDAMUS

ANDRÉ QUINN BELL
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QUESTIONS PRESENTED FOR REVIEW

1.) Can a medical practitioner's license be suspended in a civil action instead of a quasi-criminal action?

2.) Can a medical practitioner's license be suspended under a standard of review of preponderance of evidence instead of clear and convincing evidence?

PARTIES TO THE PROCEEDING

The Parties to the proceeding are:

André Quinn Bell

Iowa Board of Dental Examiners

Theresa O'Connell Weeg, Attorney General

Joseph Bertogli

Clerk of District Court, Marion County Courthouse, Knoxville, IA

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
CITATIONS OF REPORTS OF OPINIONS ENTERED IN THE CASE	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVE IN THE CASE	1
STATEMENT OF THE FACTS	1
STATEMENT OF THE ISSUES	2
STATEMENT OF RELIEF SOUGHT	2
REASONS WHY THE WRIT SHOULD ISSUE	3
CONCLUSION	9

APPENDIX

Order from the Supreme Court of Iowa ..... App. 1

TABLE OF AUTHORITIES

Page

CITATIONS

Allen v. Louisiana Bd. of Dentistry, 531 So. 2d 787 (La. Ct. App. 1988), rev'd on other grounds, 543 So. 2d 908 (La. 1989) 9

Anonymous v. The State Board of Examiners, 323 S.C. 260, 473 S.E.2d 870 (S.C. App., 1996) 6

Briggs v. Pennsylvania R. Co., 334 U.S. 304, 68 S.Ct. 1039, 92 L.Ed. 1403 (1948) 3

Casey v. Planned Parenthood, 14 F.3d 848 (3rd Cir. 1994) 3

City of Okoboji v. Iowa District Court for Dickson County, No. 130/06-1483 (2008) 3

Clark v. West Virginia Bd. of Med., 508 S.E.2d 111 (W Va. 1998) 9

Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 19 (1958) 7

Cooper v. Bd. of Profl. Discipline, 4 P.3d 561 (Idaho 2000) 9

Davis v. Wright, 503 N.W.2d 814 (Neb. 1993) 9

Ettinger v. Board of Medical Quality Assurance, 135 Cal. App.3d 853 (Cal. App. 2 Dist. 1982) 6

Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) 5

Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959) 5

TABLE OF AUTHORITIES – Continued

Page

In re Robson, 575 P.2d 771 (Alaska 1978) 8

In re Zar, 434 N.W.2d 598 (S.D. 1989).....9

Litman v. Mass. Mut. Life Ins. Co., 825 F.2d 1506 (11th Cir. 1987).....3

McFadden v. Mississippi Bd. of Licensure, 735 So. 2d 145 (Miss. 1999) 9

Miller v. U.S., 868 F.2d 236 (C.A.7 (Ind.) 1988) 4

Nelson v. I.N.S., 232 F.3d 258 (1st Cir. 2000).....8

Nguyen v. Department of Health, 144 Wash.2d 516, 29 P.3d 689 (2001) 7

Ongom v. State of Washington, En Banc No. 76618-5 (2006).....6

Ongom v. Washington State Dept. of Health, 148 P.3d 1029 (Wash. 2006) 7

Painter v. Abels, 998 P.2d 931 (Wyo. 2000).....7

Perri v. Director, Dept. of Corrections of Ill., 817 F.2d 448 (7th Cir. 1987) 4

Schireson v. Walsh, 187 N.E. 921 (Ill. 1933).....9

Service v. Dulles, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957).....8

Silva v. Superior Ct., 14 Cal. App. 4th 562, 17 Cal. Rptr. 2d 577 (1993).....8

Storrs v. State Med. Bd., 664 P.2d 547 (Alaska 1983) 8

TABLE OF AUTHORITIES – Continued

Page

Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd., 460 U.S. 533, 103 S.Ct. 1343, 75 L.Ed.2d 260 (1983) (per curiam) 4

United States v. Heffner, 420 F.2d 809 (C.A.4 (Md.) 1970) 8

United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954) 8

Upton v. S.E.C., 75 F.3d 92 (C.A.2 1996) 5

U.S. ex rel. Shore v. O'Leary, 833 F.2d 663 (7th Cir. 1987) 4

Village of Hoffman Estates v. Flipside, Hoffman Estates, 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) 5

Washington State Department of Health v. Ongom, 127 S.Ct. 2115 (2007) 6

CONSTITUTION, STATUTES AND RULES

Fifth Amendment, U.S. Constitution 1, 7

Fourteenth Amendment, U.S. Constitution 1

28 U.S.C. § 1651(a) 1

U.S. Supreme Court Rule 20 1

OTHER AUTHORITY

Barron's Law Dictionary 5

CITATIONS OF REPORTS OF OPINIONS ENTERED IN THE CASE

Iowa Supreme Court Order denying Petition for Writ of Mandamus.

JURISDICTION

This Honorable Court has jurisdiction to issue extraordinary writs under 28 U.S.C. § 1651(a) and U.S. Supreme Court Rule 20, (especially) "except in certain narrowly defined circumstances" where extreme violations have occurred.

CONSTITUTIONAL PROVISION INVOLVED IN THE CASE

Constitution of the United States of America, Fifth and Fourteenth Amendment rights of due process and equal protection under the law.

STATEMENT OF THE FACTS

The Petitioner André Quinn Bell from Knoxville, Iowa was a licensed dentist in the State of Iowa until his license was suspended by the Iowa Dental Board as of May 10, 2007. An appeal was made to the Iowa District Court for Marion County which was denied.

This Petition for Writ of Mandamus was then filed with the Iowa Supreme Court which was denied.

STATEMENT OF THE ISSUES

1.) Whether the Honorable District Court erred when it did not rule that Petitioner's case had a status of quasi-criminal or in the nature of quasi-criminal.

2.) Whether the Honorable District Court erred when it did not rule that Petitioner's case had a standard of review or proof of clear and convincing evidence.

STATEMENT OF RELIEF SOUGHT

The Petitioner requests and demands that his due process of law and equal protection of the law under the Fifth and Fourteenth Amendments of the U.S. Constitution be respected. This means that the Petitioner is entitled to his case being treated as quasi-criminal or in the nature of quasi-criminal with a standard of review or proof being clear and convincing evidence.

REASONS WHY THE WRIT SHOULD ISSUE

The U.S. Supreme Court has spoken concerning the issues involved in this instant case while it was pending. The Honorable District Court has refused to recognize and/or follow the rulings of the U.S. Supreme Court in violation of the rule of law. This Honorable Iowa Supreme Court has spoken on the fundamental rule of law principle that must be applied to this instant case as follows:

> *"It is a fundamental rule of law that a trial court is required to honor and respect the rulings and mandates by appellate courts in a case. See* Casey v. Planned Parenthood, *14 F.3d 848, 856 (3rd Cir. 1994). The rule is fundamental to the effective operation of our multitiered judicial system. See* Litman v. Mass. Mut. Life Ins. Co., *825 F.2d 1506, 1508 (11th Cir. 1987). It accounts for our orderly system of justice, which in turn contributes in a substantial way to the overall stability of our society. Since its earliest days, the United States Supreme Court recognized that 'an inferior court has no power or authority to deviate from the mandate issued by an appellate court.' Briggs v. Pennsylvania R. Co., 334 U.S. 304, 306, 68 S.Ct. 1039, 1040, 92 L.Ed. 1403, 1405 (1948)." City of Okoboji v. Iowa District Court for Dickson County*, No. 130/06-1483 (2008). (Emphasis added.)

The District Court Order ignores the established principles of law.

Stare decisis –

"The bedrock of stare decisis is that lower courts are bound by the precedential authority of cases rendered by higher courts. *U.S. ex rel. Shore v. O'Leary*, 833 F.2d 663 at 667 (7th Cir. 1987). This limitation on judicial power is one of the cornerstones of the legal structure in that it serves broader societal interests such as the orderly and predictable application of legal rules." *Miller v. U.S.*, 868 F.2d 236 (C.A.7 (Ind.) 1988).

"One foundation block of our judicial system is the principle of stare decisis, which demands adherence to precedents. Decisions are made in accord with previous authoritative decisions in similar cases emanating from one's own circuit and from the Supreme Court. A lower court owes deference to those above it; ordinarily it has no authority to reject a doctrine developed by a higher court. See, e.g., *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535, 103 S.Ct. 1343, 1344, 75 L.Ed.2d 260 (1983) (per curiam); *Perri v. Director, Dept. of Corrections of Ill.*, 817 F.2d 448, 451 n. 4 (7th Cir. 1987)." *U.S. ex rel. Shore v. O'Leary, supra.*

"Needless to say, *only this Court may overrule one of its precedents*. Until that happens [our decision] is the law . . . " (Emphasis added.) *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd., supra.*

In this case, what is the legal U.S. Supreme Court precedent concerning whether it is

quasi-criminal and has the standard of review of clear and convincing evidence? It is clearly *not* that this is a civil case with a standard of proof or review of preponderance of evidence as this Honorable Court has ruled in the Order.

Again, this case was *not* a civil action, but a quasi-criminal action against the Petitioner. Referring to Barron's Law Dictionary: Quasi means nearly, almost, like. Quasi-criminal refers to a proceeding which, though not actually a criminal prosecution, is sufficiently similar in terms of the sanction to be imposed, e.g. civil fine, loss of employment, loss of license, suspension . . . , etc. Thus, where substantial penalties and sanctions may result, a civil action becomes a quasi-criminal prosecution against the Respondent. *Goldberg v. Kelly,* 397 U.S. 254, 25 L. Ed. 2d 287 (1970); *Greene v. McElroy*, 360 U.S. 474 at 496-497 (1959); *Upton v. S.E.C.,* 75 F.3d 92 (C.A.2 1996); *Village of Hoffman Estates v. Flipside, Hoffman Estates,* 455 U.S. 489 (1982).

In a quasi-criminal prosecution, all of the due process rights must be made available to the Defendant except presentment of the charge to a grand jury. These rights are protected not only in criminal cases, but also in all cases of penal action. *Goldberg*, supra. There was no probable cause to even file a complaint in this instant case.

A case that involves a quasi-criminal nature has a standard of review of clear and convincing evidence and vice-versa. The Supreme Court of the State of Washington in an En Banc decision decided that the

standard of proof required in *cases deemed quasi-criminal in nature is clear and convincing evidence.* (Emphasis added.) *Ongom v. State of Washington*, En Banc No. 76618-5 (2006). This case and principle was upheld by the United States Supreme Court in *Washington State Department of Health v. Ongom*, 127 S.Ct. 2115 (2007).

The United States Supreme Court basically ruled and established the legal precedent that a medical practitioner before his or her medical board facing a complaint that could remove the license to practice is in the nature of quasi-criminal and the standard of proof or review is clear and convincing evidence. *Washington State Department of Health v. Ongom*, supra.

By the rule of law and legal precedents, this Honorable Court is bound by the above decision under the principle of "stare decisis."

Besides the U.S. Supreme Court in *Ongom*, supra, several State Supreme Courts and other courts already ruled concerning the quasi-criminal nature of the case and standard of proof or review of clear and convincing evidence as follows:

1.) State of California – Court of Appeals; *Ettinger v. Board of Medical Quality Assurance*, 135 Cal. App.3d 853 (Cal. App. 2 Dist. 1982).

2.) State of South Carolina – Court of Appeals; *Anonymous v. The State Board of Examiners*, 323 S.C. 260, 473 S.E.2d 870 (S.C. App. 1996).

3.) State of Wyoming – Wyoming Supreme Court; *Painter v. Abels*, 998 P.2d 931 (Wyo. 2000).

4.) State of Washington – Washington Supreme Court; *Nguyen v. Department of Health*, 144 Wash.2d 516, 29 P.3d 689 (2001); *Ongom v. Washington State Dept. of Health*, 148 P.3d 1029 (Wash. 2006).

The State of Iowa chose the Common-Law of England as the basis of its legal system. Therefore, the above cases have some legal precedent under the common-law.

The Petitioner has provided this Honorable Court with the up-to-date legal precedent that trumps any old obsolete court cases. The *Ongom* decision is the precedent law that the Iowa courts must follow.

Every state . . . judicial officer is solemnly committed by oath taken pursuant to Art. 6, cl. 3 to support this Constitution. *Cooper v. Aaron*, 358 U.S. 1 (1958). The basic principle [is] that the federal judiciary is supreme in the exposition of the law of the Constitution. *Cooper v. Aaron*, supra. The U.S. Supreme Court has ruled in *Ongom* that medical practitioners being sanctioned by their medical boards have a Constitutional right of due process under the Fifth Amendment *to have their case status be in the nature of quasi-criminal and the standard of review or proof be clear and convincing evidence*. The U.S. Supreme Court has spoken and this Honorable Court must follow.

Once again, since the Iowa Board of Dental Examiners and/or its agency and the Court did not

follow the supreme law of the land that regulates the operation and administration of said board and/or its agency and this Court decision cannot stand.

One cannot break the law in an attempt to "uphold the law."

An agency of the government must scrupulously observe rules, regulations or procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 98 L.Ed. 681 (1954); *United States v. Heffner*, 420 F.2d 809 (C.A.4 (Md.) 1970); *Service v. Dulles*, 354 U.S. 363, 1 L.Ed.2d 1403 (1957); *Nelson v. I.N.S.*, 232 F.3d 258 (1st Cir. 2000).

THEREFORE, IT IS demanded that the Order concerning the status of this case and the standard of proof or review be reconciled with the true law.

Again, in *Washington State Department of Health v. Ongom*, supra, the U.S. Supreme Court reviewed the states that have adopted the clear and convincing evidence rule.

> "Ten states that use 'clear and convincing evidence' or its equivalent do so under the common law. See *Storrs v. State Med. Bd.*, 664 P.2d 547, 555 (Alaska 1983), but see *In re Robson*, 575 P.2d 771 (Alaska 1978) (standard of proof for attorney discipline is preponderance of evidence); *Silva v. Superior Ct.*, 14 Cal. App. 4th 562, 17 Cal. Rptr. 2d 577, 582 (1993) (struck down preponderance of evidence standard of proof based on statutory

analysis); *Cooper v. Bd. of Profl. Discipline*, 4 P.3d 561, 568 (Idaho 2000); *Schireson v. Walsh*, 187 N.E. 921, 923 (Ill. 1933) ("clearly and conclusively"); *Allen v. Louisiana Bd. of Dentistry*, 531 So. 2d 787, 798 (La. Ct. App. 1988), rev'd on other grounds, 543 So. 2d 908 (La. 1989); *McFadden v. Mississippi Bd. of Licensure*, 735 So. 2d 145, 152 (Miss. 1999); *Davis v. Wright*, 503 N.W.2d 814, 818 (Neb. 1993) (struck down preponderance of evidence standard on equal protection grounds); *In re Zar*, 434 N.W.2d 598, 602 (S.D. 1989) (making exception to preponderance standard in administrative hearings for license revocations because of important interest involved); *Clark v. West Virginia Bd. of Med.*, 508 S.E.2d 111, 121 (W. Va. 1998) (where licensee charged with fraudulently obtaining license). Although a specific authority on point could not be found, it is presumed that the clear and convincing evidence standard is used in Indiana."

CONCLUSION

This Petition for Writ of Mandamus must be granted and the Order must be abated concerning quasi-criminal status and standard of review being clear and convincing evidence in this case.

Respectfully submitted,

Date: May 6, 2008

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IN THE SUPREME COURT OF IOWA

No. 08-377

Marion County No. CV 091762

ORDER

ANDRE QUINN BELL, DDS,

Petitioner-Appellant,

vs.

IOWA BOARD OF DENTAL EXAMINERS,

Respondent-Appellee.

(Filed Apr. 23, 2008)

This matter comes before the court upon the Andre's Bell's petition for writ of mandamus. The respondent has filed a resistance. Bell has filed a response.

After consideration by this court, the petition for writ of mandamus is denied.

Dated this 23rd day of April, 2008.

/s/ [Illegible]
Justice, Supreme Court of Iowa

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